

United States  
Court of Appeals  
for the Ninth Circuit

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COMMISSIONER OF INTERNAL REVENUE,  
Petitioner,

vs.

RALPH E. HEDGES, Respondent.

COMMISSIONER OF INTERNAL REVENUE,  
Petitioner,

vs.

STANLEY HEDGES CHILDRESS,  
Respondent.

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Transcript of Record

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Petitions to Review Decisions of The Tax Court  
of the United States

FILED

JUL - 9 1953

PAUL P. O'BRIEN  
CLERK



No. 13700

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United States  
Court of Appeals  
for the Ninth Circuit

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COMMISSIONER OF INTERNAL REVENUE,  
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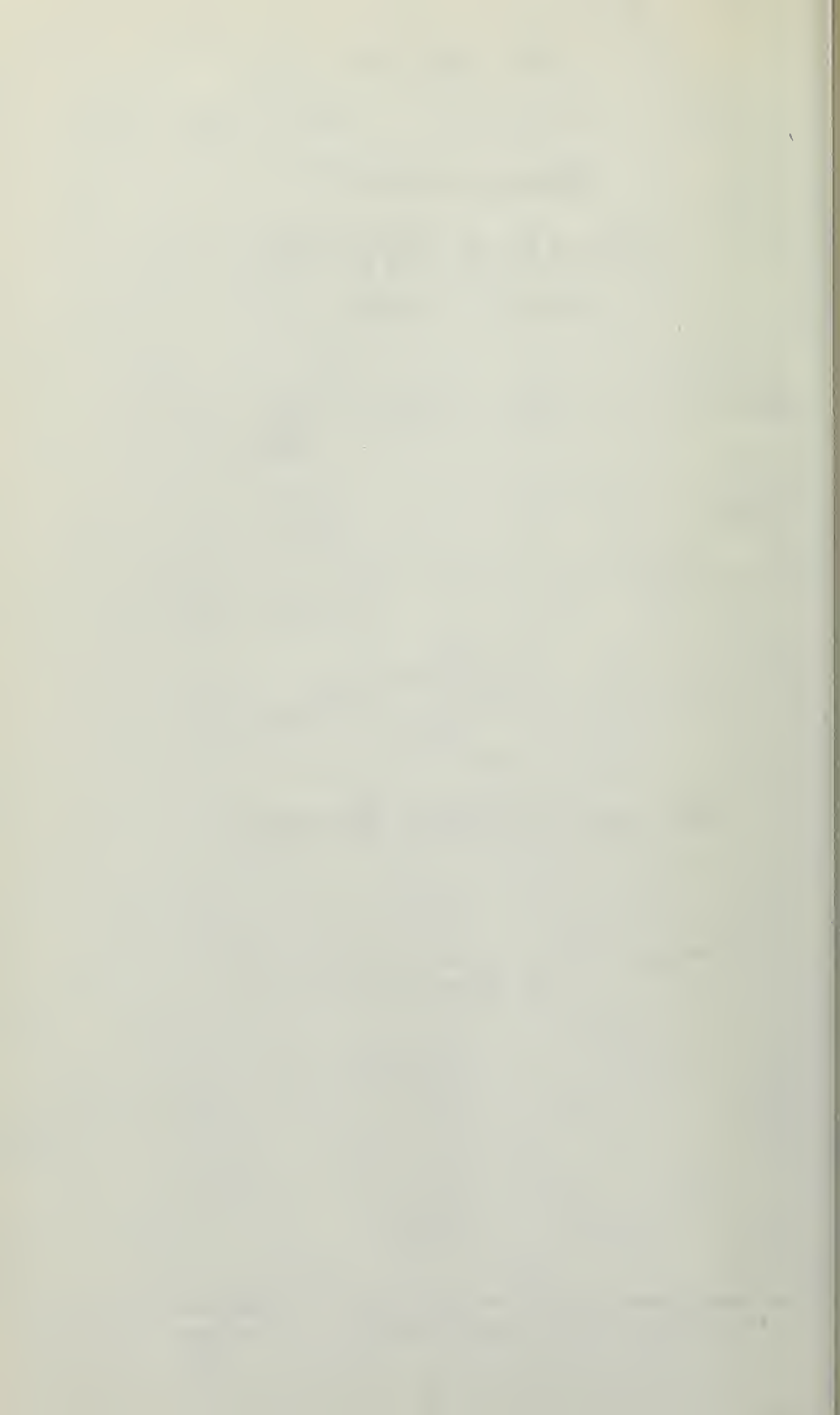
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Petitions to Review Decisions of The Tax Court  
of the United States



# INDEX

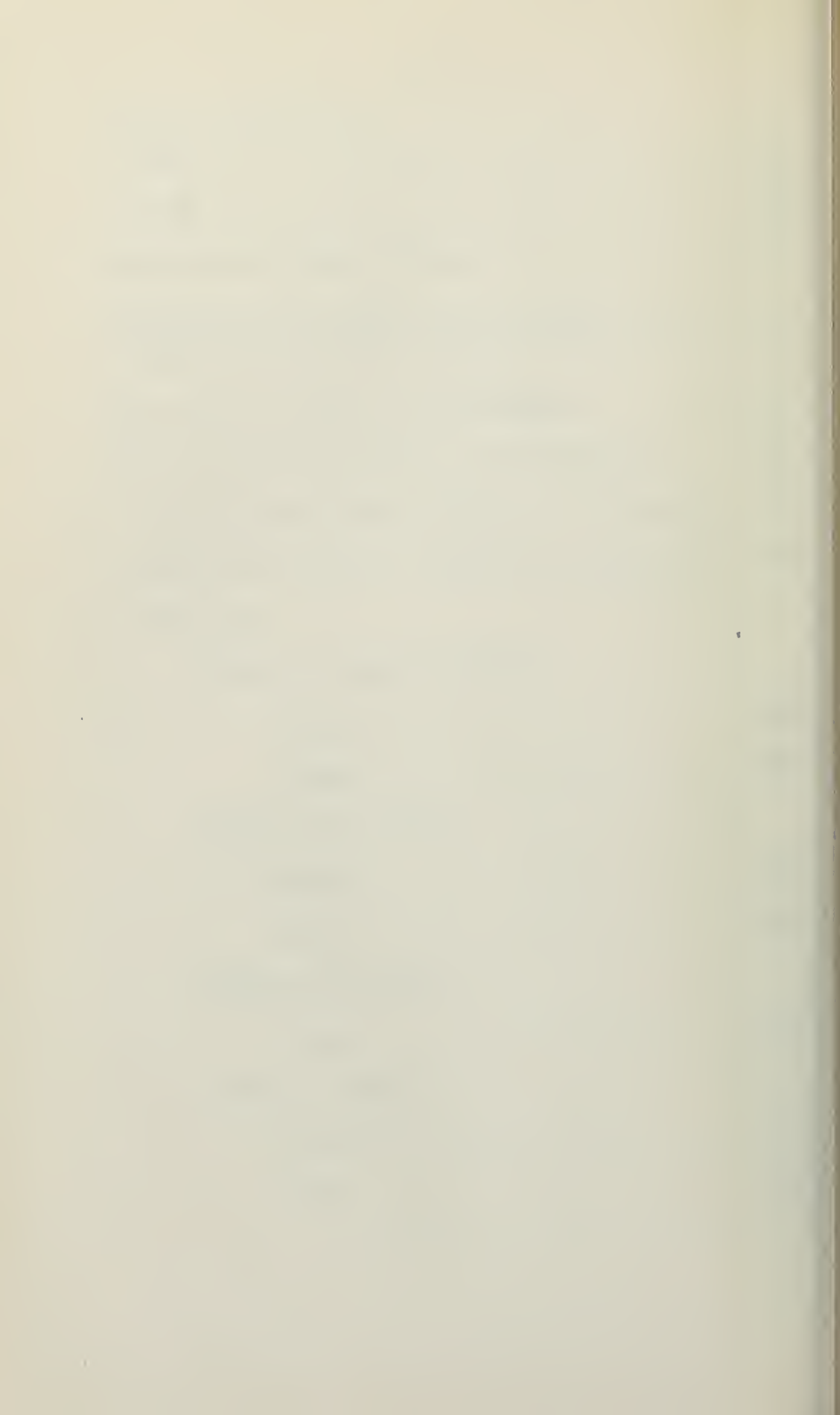
[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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## APPEARANCES

For Petitioner:

KENNETH C. HAWKINS, Esq.,  
THOMAS E. GRADY, Jr., Esq.

For Respondent:

JOHN PIGG, Esq.

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Docket No. 29469

STANLEY HEDGES CHILDRESS,  
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

## DOCKET ENTRIES

1950

- Jul. 10—Petition received and filed. Taxpayer notified. Fee paid.
- Jul. 10—Copy of petitioner served on General Counsel.
- Jul. 10—Request for Circuit hearing in Seattle, Washington, filed by taxpayer. 7/21/50  
Granted.
- Aug. 8—Answer filed by General Counsel.
- Aug. 8—Request for hearing in Seattle filed by General Counsel.

1950

Aug. 11—Copy of answer and request served on taxpayer, Seattle.

1951

Jan. 12—Entry of appearance of Thomas E. Grady, Jr., as counsel filed.

Jul. 6—Hearing set October 1, 1951, Seattle.

Oct. 9—Hearing had before Judge Murdock, on merits. Cases are consolidated for hearing on joint motion. Permission is given to withdraw exhibits and substitute photostatic copies. Stipulation of facts with exhibits 1-A to 3-C filed at hearing. Briefs due in 60 days. Replies due in 30 days.

Nov. 15—Transcript of hearing 10/9/51 filed.

Dec. 10—Brief filed by taxpayer.

Dec. 14—Motion for extension to February 8, 1952 to file brief filed by General Counsel. 12/18/51 Granted to 1/9/52.

1952

Feb. 27—Motion for leave to file the attached brief, brief lodged, filed by General Counsel. 2/29/52 Granted and served.

Mar. 4—Motion to amend findings of fact in brief filed by General Counsel.

Mar. 20—Order amending findings of fact, entered.

Apr. 21—Reply brief filed by taxpayer. Copy served, 4/22/52.

Jun. 30—Findings of fact and opinion rendered, Murdock, Judge. Decision will be entered under rule 50. 7/1/52 Copy served.

Aug. 14—Agreed computation filed.

Aug. 19—Decision entered, Murdock, Judge, Div. 3.

1952

Nov. 12—Petition for review by U. S. Court of Appeals, Ninth Circuit, filed by General Counsel.

Nov. 26—Proof of service filed on counsel and taxpayer. (2).

Dec. 4—Motion for extension of time to 2/10/53 to transmit and file record on review, filed by General Counsel.

Dec. 8—Order extending time to 2/9/53 to prepare, transmit and deliver record on review, entered.

1953

Jan. 26—Statement of points filed with statement of service by mail thereon.

Jan. 26—Statement re diminution of record filed with statement of service by mail thereon.

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The Tax Court of the United States

No. 29469

STANLEY HEDGES CHILDRESS,  
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

PETITION

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency Seattle Division IT:90D:E.E.H. dated

April 17, 1950, and as the basis of his proceeding alleges as follows:

1. Petitioner is an individual with a residence at 2703 Palatine Avenue, Yakima, Washington. The return for the period here involved was filed with the Collector at Tacoma, Washington for the Eastern District of Washington.

2. The notice of deficiency, a copy of which is attached and marked Exhibit "A", was mailed to the petitioner on April 17, 1950.

3. The deficiency as determined by the Commissioner is in income taxes for the calendar year 1944 in the amount of \$34,152.08, of which the entire amount of \$34,152.08 is in dispute.

4. The determination of tax set forth in the said notice of deficiency is based upon the following errors:

(a) That there was a deficiency for the year 1944 caused by an understatement of gross income; and that the sum of \$57,493.00 represented by cash and other property received by taxpayer in 1944 in settlement of a claim filed against the Estate of John T. Hedges constitutes taxable income to taxpayer, as held in the statement attached to Exhibit "A".

(b) That the taxpayer received dividend income in the year 1944 of \$57,439.00, and under the taxpayer's method of accounting (cash basis), the entire amount is to be recorded in the year received.

(c) That the net income is as set forth in the statement attached to said notice dated April 17, 1950, attached hereto as Exhibit "A", particularly in that there was included under "Adjustments to

Income, (a) Other Income" the sum of \$57,439.00, and that there is a deficiency of income tax as shown in said notice and in said statement.

5. The facts upon which the petitioner relies as the basis of this proceeding are as follows:

(a) For some years prior to 1923 John T. Hedges and Kitty J. Hedges were husband and wife. Two children were born to their marriage, Ralph Hedges and Ruth Hedges, who later became Ruth Hedges Childress, the mother of the taxpayer. Ruth Hedges Childress predeceased both her mother and father and left as her only heir Stanley Childress, the taxpayer. On August 31, 1923, Kitty J. Hedges died intestate. Prior to the death of Kitty J. Hedges, she and her husband, John T. Hedges, acquired as a part of their community property shares of the capital stock of the Sunshine Mining Company. After the death of Kitty J. Hedges, her surviving husband, John T. Hedges, wrongfully caused said stock certificates to be transferred on the books of the Sunshine Mining Company, and one certificate, representing all of the shares of said stock, was issued to him in his name. John T. Hedges was appointed administrator of the Estate of Kitty J. Hedges, but he failed to include in the inventory of her estate the aforesaid shares of stock, and no administration proceedings were had thereon. Said transfer of said shares of stock was wrongfully made under the laws of the State of Washington, constituting conversion, and the failure to include in the inventory and the failure to administer upon said stock as a part of the assets of Kitty J. Hedges



was likewise wrongful and constituted conversion. Taxpayer, then a minor, as a child of a deceased child inherited one-half of said Kitty J. Hedges' estate, under the laws of descent and distribution of the State of Washington.

(b) On or about February 1, 1944, John J. Hedges died testate, and his estate was duly probated in Yakima County, Washington. During the progress of the probating of the estate of John T. Hedges, proceedings were instituted by taxpayer and taxpayer filed a claim against the estate of John T. Hedges, claiming a share of said estate by reason of the wrongful transfer of said Sunshine Mining Company stock referred to in the last preceding Sub-paragraph (a). Said claim was settled, and upon application to the Superior Court of Yakima County, Washington, an order was entered allowing the taxpayer 3,550 shares of the capital stock of the Sunshine Mining Company, then valued at \$35,500.00, and real estate and cash valued at \$57,439.00. Said cash, stock and property was received by the taxpayer on September 8, 1944.

(c) Upon the death of said Kitty J. Hedges and upon the administration of her estate, there being no will, Stanley Childress inherited a portion of her estate, including said shares of capital stock, under the laws of the State of Washington, and title thereto at said time vested in taxpayer, and at said time, to-wit, on the 10th day of May, 1924, said John T. Hedges was appointed guardian of Stanley Childress, the taxpayer, and continued to act as such until August 5, 1937, at which time the taxpayer

became of age, and said guardianship proceedings were closed. Said guardian John T. Hedges wrongfully failed to list any portion of said Sunshine Mining Company stock in the inventory filed in the guardianship proceedings and wrongfully failed to report any of the dividends therefrom in said guardianship proceedings.

(d) At all times that John T. Hedges was in possession of the capital stock of the Sunshine Mining Company from the date of said Kitty J. Hedges' death up to and including the time of his death, he included each year in his annual income tax return the amount of dividends he had received upon the stock as a part of his taxable income and each year paid to the Internal Revenue Department the income taxes levied and assessed against the same.

(e) At the time John T. Hedges secured the transfer of said Sunshine Mining Company stock and had the shares of said capital stock issued to him in his own name subsequent to the death of said Kitty J. Hedges, he was guilty of a conversion of said stock, since one-half thereof under the community property laws of the State of Washington belonged to the Kitty J. Hedges estate, and the said Kitty J. Hedges estate was lawfully entitled thereto. By reason of the said conversion under the laws of the State of Washington said John T. Hedges became in contemplation of law the constructive trustee of said stock, cumulating the dividends thereon and paying the income tax thereon, resulting in no tax liability on the part of the taxpayer for any of the moneys or properties received from

the John T. Hedges estate during the year 1944; or, in the alternative, as said dividends were improperly cumulated by said John T. Hedges, and in contemplation of law vested in taxpayer, taxpayer should have been taxed during the years said dividends were paid by said Sunshine Mining Company and should not have been assessed, therefore, in the year 1944, and the additional tax liability of taxpayer for the years prior to 1944 had been fully offset and satisfied by reason of the payments made by the grandfather.

(f) From the time of said transfer of said Sunshine Mining Company capital stock from the community composed of John T. Hedges and Kitty J. Hedges, his wife, to John T. Hedges in one certificate, as aforesaid, said John T. Hedges was the duly appointed, qualified and acting guardian of the estate of taxpayer, who at that time was a minor. Said guardian was in possession of said stock and cumulated the dividends thereon and paid the tax thereon, resulting in no tax liability on the part of the taxpayer during the year 1944, when said stock, cash and property were distributed and delivered to the taxpayer from the estate of John T. Hedges.

(g) From the date of death of said Kitty J. Hedges to and through the year 1944 dividends on the said Sunshine Mining Company stock were available, and upon proper claim being made, said dividends lawfully should have been delivered to the taxpayer. Said dividends were taxable to taxpayer during the years said dividends were actually declared by the Sunshine Mining Company, resulting



in no liability on the part of the taxpayer for the receipt of said stock, cash and real property during the year 1944.

Wherefore, petitioner prays that this Court may hear the proceeding and prays that the Court enter herein an order vacating said deficiency assessment and holding the taxpayer not liable for any additional tax during the calendar year 1944.

/s/ KENNETH C. HAWKINS,  
Attorney for Petitioner

State of Washington,  
County of Yakima—ss.

Stanley Hedges Childress, being duly sworn, says that he is the petitioner above named; that he has read the foregoing Petition, or had the same read to him, and is familiar with the statements contained therein, and that the statements contained therein are true, except those stated to be upon information and belief, and that those he believes to be true.

/s/ STANLEY HEDGES CHILDRESS

Subscribed and sworn to before me this 7th day of July, 1950.

[Seal] /s/ DOROTHY ESCHBACH,  
Notary Public in and for the State of Washington,  
residing at Yakima.

## EXHIBIT "A"

Treasury Department, Internal Revenue Service  
Securities Building, Seattle 1, Wash.

Office of Internal Revenue Agent in Charge  
Seattle Division IT:90D:EEH April 17, 1950

Mr. Stanley Hedges Childress  
2602 Summitview, Yakima, Washington.

Dear Mr. Childress:

You are advised that the determination of your income tax liability for the taxable year ended December 31, 1944, discloses a deficiency of \$33,762.08, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Saturday, Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with The Tax Court of the United States, at its principal address, Washington 4, D. C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, Seattle 1, Washington for the attention of IT:90D:EEH. The signing and filing of this form will expedite the closing of you return(s) by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the in-

terest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,

GEORGE J. SCHOENEMAN,  
Commissioner

/s/ By S. R. STOCKTON,  
Internal Revenue Agent in Charge

Enclosures: Statement, Form 1276, Form of waiver.  
EEH:em

Statement

Mr. Stanley Hedges Childress,  
2602 Summitview, Yakima, Washington.

Tax liability for the taxable year ended December 31, 1944.

	Deficiency
Income tax .....	\$33,762.08

In making this determination of your income tax liability, careful consideration has been given to the report of examination dated November 19, 1947; to your protest dated March 5, 1948; and to the statements made at the conferences held on May 20, 1948 and October 4, 1948.

It is held that the sum of \$57,439.00 represented by cash and other property received by you in 1944 in settlement of a claim filed against the estate of John T. Hedges constitutes taxable income to you.

A copy of this letter and statement has been

mailed to your representative, Mr. D. W. Frame, 221 Miller Building, Yakima, Washington, in accordance with the authority contained in the power of attorney executed by you.

### Adjustments to Income

Adjusted gross income as disclosed by return, Form 1040 .....	\$ 538.02
Unallowable deductions and additional income:	
(a) Other income .....	57,439.00
	<hr/>
Total .....	\$57,977.02
(b) Standard deduction .....	500.00
	<hr/>
Net income adjusted .....	\$57,477.02

### Explanation of Adjustments

(a) As explained above, it is held that the amount of \$57,439.00 constitutes taxable income to you, and since such income was not reported on your return, your net income is increased by the amount shown.

(b) The standard deduction is allowed in the computation of your net income.

### Computation of Income Tax

Net income adjusted.....	\$57,477.02	
Less: Surtax exemption .....	500.00	
	<hr/>	<hr/>
Surtax net income .....	\$56,977.02	
Surtax .....		\$32,052.77

Net income adjusted . . . . .	\$57,477.02
Less: Normal-tax exemption. . . . .	500.00
	<hr/>
Balance subject to normal tax	\$56,977.02
Normal tax at 3 per cent. . . . .	1,709.31
	<hr/>
Income tax liability . . . . .	\$33,762.08
Income tax liability disclosed by return:	
Account No. 10,856,022 . . . . .	None
	<hr/>
Deficiency in income tax. . . . .	\$33,762.08

[Endorsed]: T.C.U.S. Filed July 10, 1950.

[Title of Tax Court and Cause No. 29469.]

### ANSWER

Now comes the Commissioner of Internal Revenue, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition herein, admits, alleges and denies as follows:

1. Admits that petitioner is an individual with residence at Yakima, Washington. It is also admitted that the return for the taxable year involved was filed with the Collector of Internal Revenue at Tacoma, Washington.

2. Admits the allegations contained in paragraph 2 of the petition.



3. Admits that the deficiency as determined by the respondent is in income tax for the calendar year 1944, the entire amount of which is in dispute. Respondent denies that the amount of said deficiency is \$34,152.08, as alleged in paragraph 3 of the petition and alleges that the amount of deficiency stated in the statutory notice is \$33,762.08.

4 (a), (b) and (c). Denies that the respondent committed error in determining the deficiency as set forth in the statutory notice, and specifically denies the allegations of error contained in subparagraphs (a), (b) and (c) of paragraph 4 of the petition.

5 (a). Admits that John T. Hedges and Kitty J. Hedges were husband and wife. Admits that two children were born to their marriage, Ralph Hedges and Ruth Hedges, who later became Ruth Hedges Childress, the mother of the taxpayer. Admits that Ruth Hedges Childress predeceased both her mother and father and left as her only heir Stanley Childress, the taxpayer. Admits that in 1923 Kitty J. Hedges died intestate. Admits that prior to the death of Kitty J. Hedges she and her husband, John T. Hedges, owned certain shares of the capital stock of the Sunshine Mining Company. Admits that John T. Hedges was appointed administrator of the estate of Kitty J. Hedges and that in preparing the inventory of her estate he failed to include therein any shares of the stock of the Sunshine Mining Company. Admits that taxpayer was a child of a deceased child of Kitty J. Hedges. Denies each and

every other material allegation of fact contained in subparagraph (a) of paragraph 5 of the petition.

(b). Admits that on or about February 1, 1944, John T. Hedges died testate and his estate was duly probated in Yakima County, Washington. Admits that during the progress of the probating of the estate of John T. Hedges taxpayer filed a claim against said estate. Admits that said claim was settled without litigation, as a result of which petitioner received 3,550 shares of the capital stock of the Sunshine Mining Company, and real estate and cash valued at \$57,439.00. Admits that said cash, stock and property were received by taxpayer on September 8, 1944. Denies the remaining allegations contained in subparagraph (b) of paragraph 5 of the petition.

(c). Admits that upon the death of Kitty J. Hedges and upon the administration of her estate, there being no will, Stanley Childress inherited a portion of her estate under the laws of the State of Washington. Denies each and every other material allegation of fact contained in subparagraph (c) of paragraph 5 of the petition.

(d). For lack of information from which to determine the truth or correctness of the allegations contained in subparagraph (d) of paragraph 5 of the petition, the same are denied.

(e), (f) and (g). Denies the allegations contained in subparagraphs (e), (f) and (g) of paragraph 5 of the petition.

6. Denies generally and specifically each and every material allegation contained in the petition, not hereinbefore specifically admitted, qualified or denied.

Wherefore, it is prayed that the petitioner's appeal be denied and that the Commissioner's determination be approved.

/s/ CHARLES OLIPHANT, WHP.

Chief Counsel, Bureau of Internal  
Revenue

Of Counsel:

WILFORD H. PAYNE,  
Division Counsel,  
Bureau of Internal Revenue.

[Endorsed]: T.C.U.S. Filed Aug. 8, 1950.



The Tax Court of the United States

Docket No. 29288

RALPH E. HEDGES, Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

Docket No. 29469

STANLEY HEDGES CHILDRESS, Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

### STIPULATION OF FACTS

It is hereby stipulated and agreed by and between the parties to these proceedings, by their respective attorneys, that the following facts are true and that the same may be so taken and considered by the Court as offered in evidence by said parties: Provided, however, that this stipulation shall be without prejudice to the right of any of said parties to introduce other and further evidence not inconsistent with the facts herein stipulated to be taken as true:

(1) Subject to the approval of the Court, these proceedings may be consolidated for hearing.

(2) Ralph E. Hedges, the petitioner in the proceeding at Docket No. 29288, is an individual, whose residence is at 120 North 48th Street, Seattle, Wash-

ington. Stanley Hedges Childress, the petitioner in the proceeding at Docket No. 29469, is an individual, whose residence is at 2703 Palatine Avenue, Yakima, Washington. Their returns for the taxable year ended December 31, 1944, were filed with the Collector for the District of Washington, on the cash basis.

(3) Ralph E. Hedges is the son of the marriage of John T. Hedges and Kittie J. Hedges, who, prior to and at the time of their respective deaths, resided at Yakima, Washington. Kittie J. Hedges died, intestate, on March 23, 1923. Her surviving husband, John T. Hedges, was thereafter married to Jessie Belton on or about April 5, 1924. John T. Hedges died, testate, on February 1, 1944.

(4) Two children were born to the marriage of John T. Hedges and Kittie J. Hedges, namely, the petitioner, Ralph E. Hedges, and a daughter, Ruth Hedges. Ruth Hedges was married prior to the year 1923, and became Ruth Hedges Childress. Ruth Hedges Childress predeceased her mother, leaving as her only surviving issue a son, namely, the petitioner, Stanley Hedges Childress. Stanley Hedges Childress was a minor at the time of the death of his grandmother, Kittie J. Hedges, on March 23, 1923.

(5) The estate of Kittie J. Hedges was administered in the Superior Court of the State of Washington in and for Yakima County (In Probate), in Proceeding No. 4728. Attached hereto and made a part hereof, as Exhibit 1-A, are true and correct (certified photostat) copies of the following de-

scribed documents, relating to the administration, in said Court, of the estate of Kittie J. Hedges: (Said Exhibit 1-A consists of 35 pages, exclusive of certifying certificate, which, for identification purposes, have been numbered 1 to 35, inclusive.)

Description of Document—Exhibit 1-A

(a) “Petition for Letters of Administration” filed by John T. Hedges, surviving husband of Kittie J. Hedges, Deceased, on August 30, 1923—pages 1, 2, 3.

(b) “Order Appointing Administrator”, filed for Record October 3, 1923—pages 4, 5.

(c) “Letters of Administration”, filed for Record October 29, 1923—pages 6, 7.

(d) “Request for Notice of Proceedings”, filed April 25, 1924—pages 8, 9.

(e) “Petition to Award Property in Lieu of Homestead”, filed 5-31-24—pages 10, 11, 12.

(f) “Order Awarding Property in Lieu of Homestead”, filed for Record 6-21-24—pages 13, 14, 15.

(g) “Final Account and Report of Administrator and Petition for Partition and Distribution and Discharge of said Administrator”, filed August 19, 1924—pages 16 to 20, incl.

(h) “Inventory and Appraisement”, filed 9-13-24—pages 21, 22, 23.

(i) “Decree Approving Final Account, Partitioning and Distributing Estate, Determining Heirs and Discharging Administrator”—pages 24 to 35, incl.

(6) The estate of John T. Hedges was administered in the Superior Court of the State of Wash-

ington in and for Yakima County (In Probate), in Proceeding No. 13326. Attached hereto and made a part hereof, as Exhibit 2-B, are true and correct (certified photostat) copies of the following-described documents, relating to the administration, in said Court, of the estate of John T. Hedges: (Said Exhibit 2-B consists of 67 pages, exclusive of certifying certificate, which, for identification purposes, have been numbered 1 to 67, inclusive.)

Description of Document—Exhibit 2-B

(a) “Petition for Probate of Will”, including Exhibit “A” thereof, being the “Last Will and Testament of John T. Hedges”, filed by Jessie Belton Hedges, surviving wife of John T. Hedges, Deceased, on February 14, 1944—pages 1, 2, 3.

(b) “Order Admitting Will to Probate”, filed for Record 2-15-44—pages 3, 4.

(c) “Letters Testamentary”—page 5.

(d) “Inventory and Appraisement”, filed May 22, 1944—pages 6 to 16, incl.

(e) “Petition for Order of Solvency”, filed 6-16-44—pages 17, 18.

(f) “Order of Solvency”, filed for Record 6-16-44—page 19.

(g) “Order Relative to the Disbursement of Dividends”, filed for Record 8-8-44—pages 20, 21.

(h) “Order for Withdrawal of Original Claim”, filed for Record 8-9-44—page 22.

(i) “Order” (Relating to issuance of 3,550 shares

Sunshine Mining Company stock to Stanley Hedges Childress) filed for Record 9-7-44—pages 23, 24.

(j) “Release” (Executed by Stanley Hedges Childress on 9-8-44)—page 25.

(k) “Release” (Executed by Ralph Hedges on 8-8-44)—page 26.

(l) “Petition for Distribution”, filed 1-29-45—pages 27 to 39, incl.

(m) “Decree of Distribution”, filed for Record 2-28-45—pages 40 to 53, incl.

(n) “Amended Creditor’s Claim of Ralph E. Hedges”, filed 8-8-44—pages 54 to 60, incl.

(o) “Creditor’s Claim of Stanley Hedges Childress”, filed 8-11-44—pages 61 to 67, incl.

(7) Prior to her death, on March 23, 1923, shares of the capital stock of Sunshine Mining Company had been issued in the name of Kittie J. Hedges, as follows: (According to the stock records of the Sunshine Mining Company)

Certificate No.	Date Issued	Number of Shares
385	9-21-21	1,250
423	11- 8-21	1,000
609	10- 9-22	2,350
		Total
		4,600

(8) Prior to his death, on February 1, 1944, seventeen thousand four hundred and fifty (17,450) shares of the capital stock of the Sunshine Mining Company had been issued in the name of John T. Hedges. With respect to these shares of stock, the following tabulation shows (a) certificate numbers;



(b) dates of issuance; (c) number of shares; and (d) from whom transferred: (According to the stock records of the Sunshine Mining Company)

Certificate Number	Date Issued	Number of Shares	From Whom Transferred
384	9-21-21	1,250	Treasury
525	10-18-21	5,000	Treasury
610	10- 9-22	2,350	Treasury
766	7-14-23	1,000	R. E. McFarland
766	7-14-23	1,000	J. L. Carson
766	7-14-23	4,600	Kittie J. Hedges
795	12- 8-23	1,000	Treasury
1,065	6-10-23	1,000	M. E. Olsen
1,067	6-10-23	250	E. A. Isaacson
		Total	17,450

(9) Subsequent to the death of John T. Hedges, on February 1, 1944, the shares of the capital stock, referred to in paragraph (8), above, were transferred to others, on the stock records of the Sunshine Mining Company, as follows:

Certificate Number	Date Issued	Number of Shares	Transferred to Whom
Y-8536-8570	8-12-44	3,500	Ralph Hedges
YO-5159	8-12-44	50	Ralph Hedges
YO-5166	8-12-44	50	Stanley Hedges
			Childress and Doris Laney Childress
Y-8571-8605	8-12-44	3,500	Stanley Hedges
			Childress and Doris Laney Childress
Y-8606-8686	8-12-44	8,100	Jessie Belton Hedges
YO-5348	6-29-45	50	Jessie Belton Hedges
Y-9487-9508	6-29-45	2,200	Jessie Belton Hedges
		Total	17,450

(10) During the years 1927 to 1944, inclusive,

cash dividends were paid by the Sunshine Mining Company on its outstanding capital stock, as follows:

Year	Per Share	Amount Attributable to 3,550 shares
1927.....	\$0.08	\$ 284.00
1928.....	0.12	426.00
1929.....	0.22	781.00
1930.....	0.16	568.00
1931.....	0.02	71.00
1932.....	0.10	355.00
1933.....	0.25	887.50
1934.....	0.68	2,414.00
1935.....	1.40	4,970.00
1936.....	2.25	7,987.50
1937.....	3.00	10,650.00
1938.....	2.20	7,810.00
1939.....	1.60	5,680.00
1940.....	1.60	5,680.00
1941.....	1.30	4,615.00
1942.....	.55	1,952.50
1943.....	.45	1,597.50
1944.....	.20	710.00
		<hr/>
	Total.....	\$57,439.00

(11) Attached hereto and made a part hereof, as Exhibit 3-C, is a true and correct copy of a certain "Contract of Settlement" entered into, under date of August 8, 1944, by and between the petitioner, Ralph E. Hedges, and Jessie Belton Hedges, individually and as executrix of the estate of John T. Hedges, deceased.

(12) In addition to the documents included in Exhibits 1-A and 2-B, hereinabove referred to, any of the parties to these proceedings may offer in evidence, without objection, a duly certified copy of any other document included as a part of the record

or file of the Superior Court of the State of Washington in and for Yakima County (In Probate), "In the Matter of the Estate of Kittie J. Hedges, Deceased", No. 4728, or as a part of the record or file of said Court "In the Matter of the Estate of John T. Hedges, Deceased", No. 13326; also, such a duly certified copy of any document included as a part of the record or file of said Court "In the Matter of the Guardianship of Stanley Hedges Childress, a Minor", No. 4946, may likewise be offered in evidence, without objection.

/s/ A. R. KEHOE,  
Counsel for Petitioner, Ralph E.  
Hedges, Docket No. 29288.

/s/ KENNETH C. HAWKINS,  
Counsel for Petitioner, Stanley  
Hedges Childress, Docket No.  
29469.

/s/ CHARLES OLIPHANT, WHP,  
Chief Counsel, Bureau of Internal  
Revenue, Counsel for Respondent.

[Endorsed]: T.C.U.S. Filed Oct. 9, 1951.



[Title of Tax Court and Causes Nos. 29469, 29288.]

## PROCEEDINGS

Circuit Court of Appeals Courtroom, Seattle, Wash-  
ington—October 9, 1951—10:50 a.m.

(Met, pursuant to notice.)

Before: Honorable J. Edgar Murdock, Judge.

Appearances: A. R. Kehoe, Colman Bldg., Seattle, Wash., Counsel for Petitioner Hedges. Kenneth C. Hawkins, 614 Miller Bldg., Yakima, Wash., Counsel for Petitioner Childress. John H. Pigg, Counsel for the Respondent.

### Statement of the Case on Behalf of the Petitioner

Mr. Hawkins: As I understand from our prior discussion, Your Honor, you have many of the details of this case in mind, but there are just one or two points that I want to point out to Your Honor. At the time of the death of John Hedges' first wife, Stanley Childress was about six years old. His uncle, Ralph Hedges, the other taxpayer, was approximately twenty-five or twenty-six years old. When Kitty Hedges died, her husband, John T. Hedges, was appointed Administrator of her estate, and just prior to the closing of her estate, by reason of the fact that Stanley Childress was a minor, it was necessary to appoint a guardian of his estate, and John Hedges was appointed guardian, of Stanley Childress' estate.

The Court: Who was his grandfather?

Mr. Hawkins: Who was his grandfather; and he became the legal guardian, and he took possession of the assets in the Kitty Hedges estate, which, under the community law, descended to Stanley Childress.

The Court: Under the law, they should have gotten that done promptly under the proper administration of the estate? Is that correct?

Mr. Hawkins: That is correct. Prior to the time that Kitty Hedges passed away, John and Kitty both acquired a number of shares, 14,200 shares of stock in the Sunshine Mining Company. That stock was not listed in the inventory of the Kitty Hedges Estate. As a matter of fact, about two months or so prior to the time that John Hedges was appointed Administrator of his wife's estate,—she died without a will,—after Kitty Hedges had actually died, he went to the office of the Sunshine Mining Company, and had that stock transferred into his own name, and therefore, when he was appointed Administrator, he did not list the stock in the estate, nor did he list any dividends or income from it in the guardianship estate, which he was guarding. Under the Washington Community law, one-fourth of those 14,200 shares descended to Ralph Hedges, and one-fourth to Stanley Childress.

I might point out, the mother of Stanley Childress, or Ruth Childress, passed away prior to the death of her mother, Kitty Hedges. These facts are all stipulated.

Now, there is one other thing that I want to point out, which I think should be borne in mind, and that is the fact, as suggested at the outset, when

these claims were filed against the Hedges estate, one by Ralph Hedges, and one by Stanley Childress, Ralph Hedges was represented by an attorney who was paid \$21,000.00, and this attorney's fee,—that is the attorney's fee which has to be distributed in connection with what you find was earned in connection with the income dividends from the Sunshine Mining Company. Stanley Childress, however, was not represented by an attorney. The individual who prepared his claim was the attorney for the estate, or for the executor of the estate, the then Mrs. Jessie Hedges. It was her attorney that prepared the claim for Stanley. In paying those claims, each of the Claimants received 3,550 shares of stock in the Sunshine Mining Company, which was exactly one-fourth of the 14,200 that stood in the name of John and Kitty, prior to Kitty's death. Stanley received 3,550 shares of the Sunshine Stock, and he received property and cash in full settlement of the balance of his claim. He did not receive cash for the entire balance over and above the Sunshine Stock. I wanted to point this out to Your Honor, as it may possibly have some significance.

I think that briefly outlines the essential facts.

The Government takes the position that these dividends were received by John,—when they were turned over to Stanley and Ralph in 1944, the year of John Hedges' death, or that portion of the amount turned over equivalent to the dividends received by John during his lifetime, and that that was income in that year to the taxpayer. That is the Government's position.

It is our position that it is not income to the taxpayer during the year 1944, but, in the event it is deemed income to the taxpayer, it should be attributed to each of the years in which the dividends were actually realized by the grandfather, John Hedges, the father of Ralph Hedges. We have several theories to sustain our position in that respect, but I suppose that should be presented in the brief.

Mr. Kehoe: I have nothing to add except as to the issue on the attorney's fees, but that will be covered in the briefs, also.

Statement of the Case on Behalf of the Respondent  
By Mr. Pigg

Mr. Pigg: If the Court please, in view of what has transpired, and Your Honor's familiarity with the issues involved, I see no point in taking time to prolong the opening statement. I think there are one or two points that might be pointed out at this time factually, as the evidence will show, that at all times prior to 1944 and subsequent to the death of the first decedent, that is, Kitty Hedges, the Mother and the Grandmother of the two Petitioners here, John T. Hedges, the surviving spouse stood as the unchallenged owner of the shares of stock in controversy. I agree with Counsel that various theories no doubt will be presented in support of the Petitioners' contention, but they can be answered just as well in brief as gone into here.

The cases, I do not believe, have been consolidated.

The Court: They may be consolidated for the purpose of this hearing.

Mr. Pigg: I assume the record is clear, but in case it is not, as I do not recall any statement of appearances, Mr. Kehoe appears for one Petitioner, and Mr. Hawkins appears as Counsel for the other Petitioner.

The Court: Your position, as I take it, is that these two taxpayers were on a cash basis and they had nothing to report until they got the cash?

Mr. Pigg: Exactly, Your Honor.

Your Honor, the parties have included a formal written stipulation, and, in effect, it consists primarily of what we believe to be the material documents in the two probate proceedings in the Superior Court of the State of Washington for Yakima County, in which the estates of both Kitty Hedges and John T. Hedges were administered.

The Court: The stipulation and the exhibits may be received in evidence.

Mr. Kehoe: Counsel indicated that he would stipulate with us that Kitty J. and John T. Hedges were married on or about April 25, 1888.

Mr. Pigg: It is so stipulated.

The Court: And I take it that they continued as husband and wife until the death of Kitty?

Mr. Kehoe: Yes, Your Honor. I will cover that in my examination.

Mr. Hawkins: May I proceed, then, Your Honor.

The Court: Yes.



Evidence on Behalf of the Petitioners  
Mr. Hawkins: I will call Mrs. Dean.

JESSIE BELTON DEAN

a witness called on behalf of the Petitioners, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Hawkins): Will you state your name?      A. Jessie Belton Dean.

Q. Where do you live, Mrs. Dean?

A. Yakima, Washington.

Q. You came over here at the request of myself, to testify in this proceeding?      A. I did.

Q. Did you know John Hedges during his lifetime?      A. I did.

Q. I believe he was your husband?

A. He was.

Q. When were you and John Hedges married?

A. April 5, 1924.

Q. And from that time down until the time of his passing away, you were husband and wife?

A. Yes.

Q. And he passed away on February 1st, 1944?

A. Yes.

Q. And you were appointed the executrix of his estate?      A. Yes.

Q. He left a will, did he not?      A. He did.

Q. Now, did you know John Hedges' first wife, Kitty Hedges, during her lifetime?      A. I did.

Q. I believe it was a year after she passed away that you and John were married?

(Testimony of Jessie Belton Dean.)

A. A little over a year.

Q. And did you hear John Hedges at or about the time you married him, or shortly after, say anything to you concerning the Sunshine Mining Company stock?      A. Yes.

Q. I wonder if you will just tell the Court what he said in that respect?

A. Well, I suppose you want me to say what he said in the conversation we had just after the settlement of the estate?

Q. Of Kitty's estate?      A. Yes.

It was right after we were married, anyway, and he made the remark,—he said, "Now, Jessie, Kitty asked me to promise to never let Ralph know that we had the Sunshine stock, and I want you to promise me that you will never tell him."

Q. Now, did you have occasion to talk to your husband, John Hedges, concerning the Sunshine stock at any time after that, Mrs. Dean?

A. Oh, yes.

Q. Was there any discussion at any time about how the stock was to be disposed of at the time of his death?

A. Well, you see there was a great deal of disturbance and ill feeling and so on at the time of Kitty's death. She left no will, and Ralph took the matter to court immediately after her death to get what he thought was his share, although there was no will and the laws of the land would have given him his one-quarter anyway; and, consequently, his

(Testimony of Jessie Belton Dean.)

father was very much disturbed, and before we were married he willed everything to me; I was then just Jessie Ames Belton; and just shortly before we were married, he willed everything to me. I will say this, going back to the time that he asked me never to tell Ralph, I made the remark to him, "Don't you have to declare the Sunshine stock in the inventory of the estate?" And he said, "I do not," because it was of no value, and he said, "What difference does it make?" And he said, "My attorney told me to not declare anything that was of no value;" and it seems that at that time there was a sort of policy being carried on by the attorneys, to not declare things of no value, because of the lengthy records that were involved many times; so they had that sort of an agreement, and so he did not declare them.

Q. Now, did he say anything to you about what you were to do with the property after it was willed to you?

A. Well, of course, it did not come into dividends; it was \$60,000.00 in the red at the time when I married him, and then later on when it did come in and began paying dividends, as the years went on, I said to him a couple of times, "I wonder if you ought not to make a new will," and he said, "No; that will stands; I will leave it to you to take care of everything as between you and him."

Q. With respect to Ralph?           A. Yes.

Mr. Hawkins: I think that is all.



(Testimony of Jessie Belton Dean.)

Cross Examination

Q. (By Mr. Pigg): Mrs. Dean, in the stipulation of facts which has been filed in these cases, there is included among the exhibits a document described as a contract settlement, to which Ralph E. Hedges and one Jessie Belton Hedges, as Executrix of the Estate of John B. Hedges, and individually, are named as the parties thereto. Are you the same person?

A. I am the same person.

Mr. Pigg: I don't think I have any further questions.

The Court: If there are no further questions, the witness is excused.

(Witness excused.)

Mr. Hawkins: Mr. Stanley Hedges Childress.

STANLEY HEDGES CHILDRESS

a witness called on behalf of the Petitioners, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Hawkins): Will you state your name?

A. Stanley Hedges Childress.

Q. Where do you live?

A. Yakima, Washington.

Q. How old are you at the present time?

A. 35.

(Testimony of Stanley Hedges Childress.)

Q. When and where were you born?

A. Yakima, Washington, July 29, 1916.

Q. You are the Stanley Hedges Childress that is named in these proceedings? A. I am.

Q. As a Petitioner? A. I am.

Q. Mr. Childress, you became of age, I believe, in 1937, did you not? A. That is right.

Q. What were you doing at that time? Were you gainfully employed or not?

A. At the time I reached my majority, I was with my father and grandfather in Yakima on a fruit ranch.

Q. You were working on their fruit ranch?

A. Yes, and I helped them.

Q. And did you do any other work from that time on up until the time you entered the service?

A. Yes.

Q. What kind of work was that?

A. At the time that I was home in Yakima, I was taking a correspondence course in refrigeration and air conditioning, which was to be completed in Chicago. I completed that in 1940, October 1940. When that was completed I went from there to California.

Q. And then what did you do after you got to California?

A. I was inducted into the service in December, 1942.

Q. Prior to the time you were inducted into the service, will you just state to the Court what was your maximum income in one month?

(Testimony of Stanley Hedges Childress.)

A. \$225.00 including the overtime.

Q. What kind of work were you doing at that time?

A. I was working for Vultee Aircraft Company in California, as a lead man.

Q. And you went into the Army in what capacity?

A. As a private in the Army Air Forces.

Q. And how long were you with the Army?

A. Three years.

Q. And did you serve any time overseas?

A. Approximately a year.

Q. And did you remain a private throughout the time you were in the service?

A. I was advanced to private first class.

Q. What was the highest income you had in any one month during the time that you were in the service?

A. My service pay.

Q. What was that?

A. Well, it was a basic of \$50.00 plus overseas pay, and I have forgotten exactly what that was.

Q. Were you in the service in 1944 when your grandfather, John T. Hedges, passed away?

A. Yes, I was.

Q. And where were you stationed at that time?

A. At that time, at the time of his death, I was in Cook, Nebraska.

Q. When did you first hear that you had the possibility of a claim against his estate,—against the John T. Hedges estate?

A. I don't recall the exact date, but it was in the

(Testimony of Stanley Hedges Childress.)

early part of 1944, when my wife, Doris, sent me a newspaper clipping stating that Ralph had filed a claim against the estate.

Q. And were you later contacted by the attorney for the estate? A. Yes.

Q. And who was that?

A. Harcourt Taylor.

Q. And did he contact you personally, or did you have correspondence with him?

A. It was correspondence.

Q. And it ended up in your assigning the claim against the John T. Hedges Estate?

A. Yes.

Q. Where were you when you assigned that claim?

A. I was in Great Bend, Kansas.

Q. Now, was that assigned as a result of any collusion between you and Mrs. Hedges in order to reduce the assets in the John T. Hedges estate?

A. No.

Mr. Pigg: I will object to that and move to strike as it calls for a conclusion as to what this witness considers a collusion.

The Court: Is anybody claiming there was a collusion?

Mr. Pigg: No.

The Court: Well, he said there was not; so everybody should be happy.

Mr. Pigg: Yes, but I don't know what point he is going to make.

(Testimony of Stanley Hedges Childress.)

The Court: Just to show that there was no collusion.

Mr. Hawkins: Did you have any contact with Jessie Hedges at that time, the lady who was on the stand this morning just before you?

A. Well, we have regular correspondence. I say regular, but I am a poor correspondent. I mean that we did correspond.

Q. Was there anything in that correspondence in which you agreed to file a claim in order to reduce the assets of the John T. Hedges estate?

A. No, sir.

Mr. Hawkins: You may examine.

#### Cross Examination

Q. (By Mr. Pigg): Mr. Childress, included among the documents and exhibits to the stipulation of facts in this case is a photostatic copy of a document being a claim filed by one Stanley Hedges Childress against the estate of John T. Hedges. You are the person described in that document, are you not?

A. I am Stanley Hedges Childress, yes.

Mr. Pigg: That is all I have.

The Court: The witness is excused.

(Witness excused.)

Mr. Hawkins: Will you come forward, please, Mr. Hardy?



## FRANK M. HARDY

a witness called for and on behalf of the Petitioners, having been first duly sworn, was examined and testified as follows:

## Direct Examination

Q. (By Mr. Hawkins): Will you state your name?      A. Frank M. Hardy.

Q. Where do you live, Mr. Hardy?

A. I live at Yakima, Washington.

Q. What is your occupation?

A. I am Vice-President and Treasurer of the Sunshine Mining Company.

Q. You came here at our request for the purpose of testifying in these proceedings?      A. I did.

Q. Now, I think you stated that you were Vice-President and Treasurer of the Sunshine Mining Company?      A. That is right.

Q. And what are your duties in that connection, sir?

A. Well, I am also a director in the Company, and I am directly in charge of the home office, the Yakima office.

Q. What is the home office? Where is the home office?

A. It is in Yakima. It is a transfer office and a dividend-disbursing office of the Company.

Q. And do you have under your direct supervision and control the records of the Sunshine Mining Company?      A. I do.

Q. I wonder if you will state whether or not



(Testimony of Frank M. Hardy.)

John Hedges was ever an officer of the Sunshine Mining Company?

A. He was secretary years ago.

Q. As a matter of fact, he was one of the original investors in that Company; isn't that right?

A. That is right.

Q. And he did serve as an officer of that company; isn't that right? At one time?

A. Yes.

Q. And he was a close friend of the other individuals who brought the Company into being?

A. To my knowledge, he was; yes.

Q. Now, you have brought with you, and they are in the package on the Counsel Table, the original records pertaining to the stock of John T. Hedges?

A. That is right.

Mr. Hawkins: Your Honor, with Counsel's permission, instead of using the original records, we have prepared photostatic copies thereof, which I would prefer to use instead of the originals, for the purpose of identification.

The Court: That may be done, if there is no objection.

Mr. Pigg: No objection.

Mr. Hawkins: The originals are here for inspection if Counsel wishes.

The Court: Why don't you identify them and put them in? You are not going to object to them, Mr. Pigg?

Mr. Pigg: No.

(Testimony of Frank M. Hardy.)

The Court: You might put those in instead of having them stamped twice.

The Clerk: They will be Exhibits 4, 5, and 6.

(Whereupon, the documents above-referred to were marked for identification as Petitioners' 4, 5, 6.)

Q. (By Mr. Hawkins): Mr. Hardy, I am handing you Petitioners' 4 for identification. That is a photostatic copy of what record?

A. The stockholder's account of John T. Hedges.

Q. And is that a true copy of the original in the records of the Company?      A. Yes.

Q. And kept under your supervision?

A. Yes.

Mr. Hawkins: I will offer Petitioners' 4.

Mr. Pigg: No objection.

The Court: Admitted.

(The document previously marked for identification as Petitioners' 4 was received in evidence.)

Q. (By Mr. Hawkins): Mr. Hardy, I am handing you Petitioners' 5 for identification. Will you state what those three sheets are?

A. This is the stock ledger of John T. Hedges, issued after the previous one; in other words,—this one followed.

Q. In chronological order?

A. That is right.

Mr. Hawkins: We will offer Petitioners' 5 for identification.

Mr. Pigg: No objection.

(Testimony of Frank M. Hardy.)

The Court: Admitted.

(The document previously referred to as Petitioners' 5 for identification, was received in evidence.)

Q. (By Mr. Hawkins): Mr. Hardy, I am handing you Petitioners' 6 for identification. Will you state what that is?

A. There are several different certificates here.

Q. Those are photostatic copies of certificates issued by the Sunshine Mining Company, which have been returned to the Company and cancelled?

A. Yes; and issued to John T. Hedges, that is right.

Mr. Hawkins: I will offer in evidence, Your Honor, Petitioners' 6 for identification.

Mr. Pigg: No objection.

The Court: Admitted.

(The document previously referred to as Petitioners' 6 for identification, was received in evidence.)

Mr. Hawkins: Your Honor, while the witness was on the stand, I thought I might call to Your Honor's attention the stipulation only admits the existence of 13,200 shares in the possession of Kitty Hedges and John Hedges, at the time of the death of Kitty Hedges. Actually there were 14,200 shares that was evidenced by the first certificate shown in connection with Exhibit 6. It is a certificate issued to Mrs. R. E. MacFarland for 1,000 shares, and endorsed by her on October 19, 1922, to John T. Hedges in the presence of E. Wood. The endorse-

(Testimony of Frank M. Hardy.)

ment shows that 1,000 block shares of Sunshine Mining Company stock was in the possession of John T. Hedges at the time of the death of Kitty Hedges, and prior to her death. I think that is perhaps something that Mr. Pigg had not known before, and for that reason I want to mention it.

Mr. Pigg: If Your Honor please, so far as the number of shares are concerned, insofar as the 14,200 that he mentioned here are concerned, that figure is based upon what Government's Counsel and what the Petitioners' Counsel believed were correct at the time of stipulation. So far as I know, there is no importance here on the issue before the Court, as to whether there were 14,200 or 13,200. I know we discussed it at one time, and we could not determine from the information we then had which it was.

So far as the Respondents are concerned, we are willing to stand on whatever the Exhibit shows in that regard. It makes no difference.

Mr. Hawkins: I would like to have the record show that the originals are here for Counsel's inspection. There is one other point that I want to call to Your Honor's attention. If you will observe, some of them are issued in the name of Kitty J. Hedges, and I want to call your Honor's attention to the endorsement on the reverse side thereof, dated July 14, 1923, "Kitty J. Hedges, by John T. Hedges," and the assignee or transferee is John T. Hedges; and that was some three or four months after Kitty Hedges' death.

(Testimony of Frank M. Hardy.)

Mr. Hawkins: I have no further questions.

Mr. Pigg: No questions.

The Court: The witness is excused.

(Witness excused.)

Mr. Hawkins: Counsel has in his possession some income tax returns of John T. Hedges, which we have agreed may be offered in evidence, copies thereof, and I would like to have marked for identification the returns for the years 1934, 1935, 1937, 1938, 1939, 1940, 1941, and 1942 and 1943.

The Court: Are you going to offer all those?

Mr. Hawkins: Yes.

The Court: Is there any objection?

Mr. Pigg: No objection.

The Court: They may be admitted.

Mr. Pigg: As one exhibit?

Mr. Hawkins: As one exhibit.

The Clerk: Petitioners' 7.

(The document above-referred to was marked for identification as Petitioners' Exhibit 7.)

The Court: They may be admitted.

(The documents previously marked for identification as Petitioners' Exhibit 7, were received in evidence.)

Mr. Hawkins: The years '34 to '43 inclusive.

Mr. Kehoe: I believe 1936 was omitted.

Mr. Hawkins: With the exception of 1936. I wonder if Counsel will stipulate that these exhibits may be withdrawn after the case?

The Court: You mean when the decision becomes final?



Mr. Hawkins: Yes.

The Court: They will be sent back to you whether you agree or not.

Mr. Pigg: And we would like to have leave to withdraw any exhibit for the purpose of photostating them.

Mr. Hawkins: We have no objection.

The Court: That may be done.

Mr. Hawkins: Your Honor, the stipulation provides that either party may offer in evidence certain certified copies, that is, certified by the County Clerk, of the proceedings in the John T. Hedges estate and the Kitty J. Hedges estate, and the matter of guardianship of Stanley Hedges Childress. I would like to have that offered as Exhibit 8 in evidence. That is, a certified copy of the proceedings of the guardianship proceedings, the guardianship involving Stanley Hedges Childress.

Mr. Pigg: No objection.

The Court: That will be admitted as Exhibit 8.

(The document above-referred to was received in evidence as Petitioners' Exhibit 8.)

Mr. Hawkins: We have no further evidence. The stipulation of facts has already been admitted.

Mr. Pigg: Yes.

Mr. Kehoe: I have just one witness.

The Court: All right.

Mr. Kehoe: Mr. Ralph Hedges. This witness, Your Honor, has a little difficulty in hearing, and I may have to talk quite loud.



RALPH E. HEDGES

a witness called on behalf of the Petitioner, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Kehoe): Will you state your name?

A. Ralph E. Hedges.

Q. You are one of the Petitioners in this case?

A. Yes.

Q. And what was the year of your birth?

A. 1896.

Q. And you are the son of John T. and Kitty J. Hedges, is that correct?      A. Yes.

Q. Where were you born?

A. Indianapolis, Indiana.

Q. And did you live with your parents during your childhood?      A. Yes.

Q. Did you move to Washington in 1902?

A. Yes.

Q. And you lived where?

A. Near Yakima.

Q. And you lived continuously near Yakima thereafter?      A. Yes.

Q. Your mother died in 1923; is that correct?

A. Yes.

Q. And your father in 1944?      A. Yes.

Q. Was your father's estate probated in Yakima County?      A. Yes.

Q. And did you file a claim in the Estate?

A. Yes.

(Testimony of Ralph E. Hedges.)

Q. And did you recover on that claim?

A. Yes.

Q. And what was the basis of that claim? What was the reason for the claim? What rights did you think that you had that had not been honored?

A. One-fourth of mother's estate.

Q. One-fourth of your mother's estate?

A. Yes.

Q. How did that come about in 1944? What property did you think you had a right to in that claim?

A. It was a part of my mother's.

Q. At the time of your father's death, when you filed a claim against his estate, what property did you claim was yours?

A. One-fourth of the Sunshine.

Q. One-fourth of the Sunshine?

A. Yes.

Q. Sunshine Mining Stock; is that correct?

A. Yes.

Q. Are you married, Mr. Hedges?

A. Yes.

Q. How long have you been married?

A. Twenty-nine years.

Q. Do you have any children?

A. I have two sons.

Q. What are their ages?

A. Twenty-six and twenty-three.

Q. And do you live in Seattle now?

A. Yes.

Q. How long have you lived here?

(Testimony of Ralph E. Hedges.)

A. About ten years.

Q. And do you recall where you worked from 1941 to 1944?      A. Yes.

Q. It was in Seattle, was it?      A. Yes.

Q. Where?      A. Safeway.

Q. And what was your maximum monthly wage for the period 1941 to 1944?

A. \$250.00 to \$300.00.

Q. And did you have any appreciable outside income from 1941 to 1944? And by that I mean did you have any outside income outside of the Safeway income?      A. No.

Q. And where did you live prior to 1941?

A. Yakima.

Q. For about how long have you lived there?

A. Twenty years.

Q. And were you working when you lived in Yakima?      A. Yes.

Q. What was your maximum monthly wage while you worked in Yakima, as I take it, with various employers?

A. Well, my maximum was about \$150.00.

Q. About \$150.00 a month?      A. Yes.

Q. And did you have any appreciable outside income, and by that I mean, more than \$500.00 a year from other sources, other than from your work?      A. No.

Mr. Kehoe: That is all, Your Honor.

Cross Examination

Q. (By Mr. Pigg): Mr. Hedges, included

(Testimony of Ralph E. Hedges.)

among the Exhibits already in evidence in this case are photostatic copies of several court records and documents, and among them is the document which describes the claim which you filed against your father's estate, the estate of John T. Hedges.

A. Yes.

Q. You are the same individual and person referred to in that claim? A. Yes.

Mr. Pigg: I think that is all, Your Honor. No, just one more question, if you please.

Q. (By Mr. Pigg): Also, among those papers and exhibits is a document described as a contract of settlement between Ralph E. Hedges and Jessie Beldon Hedges as executrix of the Estate of John T. Hedges, individual? A. Yes.

Q. You are the same Ralph E. Hedges referred to there? A. Yes.

Mr. Pigg: I think that is all, Your Honor.

The Court: That is all, Mr. Hedges.

(Witness excused.)

Mr. Hawkins: The Petitioner rests.

The Court: The Petitioner rests.

Mr. Pigg: At this time I would like to offer in evidence the income tax return of Ralph E. Hedges for the year 1944, as a Respondent's Exhibit D.

The Court: Admitted.

(The document above-referred to was received in evidence as Respondent's Exhibit D.)

Mr. Pigg: And the income tax return of Stanley Hedges Childress for the year 1944 as Respondent's E.

The Court: Admitted.

(The document above-referred to was received in evidence as Respondent's Exhibit E.)

Mr. Pigg: And as Respondent's F, the Estate Tax Return of John T. Hedges, dated February 1, 1944.

The Court: Admitted.

(The document above-referred to was received in evidence as Respondent's Exhibit F.)

Mr. Kehoe: We have no objection to these. We have agreed with Counsel in advance.

The Court: I understand.

Mr. Pigg: If the Court please, on Schedule L of Respondent's Exhibit F, being the Estate Tax Return of John T. Hedges, there are two items to be identified, each of which as to amounts is \$82,289.00, and they refer to the two claims, one each by Ralph E. Hedges, and one by Stanley Hedges Childress, which have been under discussion here; and those returns, Your Honor, show there has been a deficiency in the Estate tax of \$13,689.26. Counsel, as I understand it, stipulates that no part of the deficiency is based in any wise on any adjustments in respect to either of the items of \$82,289.00 appearing in Schedule L, and that the two deductions there claimed on Schedule L were allowed as Claims by the Respondent.

Mr. Kehoe: That is right, Your Honor. No objection. The record will show that?

The Court: The record will show that.

Mr. Pigg: The Respondent rests.



The Court: The case stands submitted. I think you may file simultaneous briefs.

Mr. Hawkins: There are two separate cases, and I presume each of us will want to file briefs.

Mr. Kehoe: Counsel for Mr. Childress lives in Yakima, but we will try to avoid duplication as much as possible.

The Court: What time do you want?

Mr. Pigg: I would like to have not less than 60 days, and concurrent briefs.

The Court: Is that agreeable?

Mr. Hawkins: Yes.

The Court: Sixty days for the original briefs, simultaneously, and thirty days more for the reply.

(Whereupon, at 11:45 o'clock, p.m., October 9, 1951, the hearing was adjourned.)

[Endorsed]: T.C.U.S. Filed Nov. 15, 1951.

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[Title of Tax Court and Causes Nos. 29288, 29469.]

## FINDINGS OF FACT AND OPINION

Income — Trust — Fiduciary—Beneficiaries — Delayed Receipt—Sections 142, 161, 162.—A fiduciary held stock in his own name which he failed to disclose and have distributed to the beneficiaries as an asset of the estate of a decedent to which it belonged and which he was administering. The heirs were unaware that he held the stock. The fiduciary continued to hold the stock and received dividends on it as a fiduciary and was liable for tax on the dividends so that when the stock and dividends were



later turned over to the heirs they were not taxable in the year of receipt on the dividends for prior years.

Kenneth C. Hawkins, Esq., and A. R. Kehoe, Esq., for the petitioners.

John H. Pigg, Esq., for the respondent.

The Commissioner determined deficiencies and penalties under section 294 as follows:

	1944		1945
	Deficiency	Penalty	Deficiency
Ralph E. Hedges	\$23,484.38	\$10.61	\$132.00
Stanley Hedges Childress	33,762.08		

The deficiency for 1945 is not contested. The issues for decision are whether \$57,439 received by each petitioner in 1944 is taxable income.

### FINDINGS OF FACT

The petitioners filed their income tax returns for 1944 with the collector of internal revenue for the district of Washington. Each used the cash receipts and disbursements method of reporting his income.

John T. Hedges and Kittie J. Hedges were married in 1888. They moved to Yakima, Washington, about 1902 and resided there until they died. They had two children, the petitioner, Ralph E. Hedges, born in 1896, and Ruth Hedges Childress who predeceased her mother and left as her only surviving issue the petitioner, Stanley Hedges Childress, born July 29, 1916. Kittie died intestate on March 23, 1923. John became her executor in October 1923.

The community property of John and Kittie, as

listed by him in the administration of Kittie's estate, had an appraised value of \$36,429.17. A distribution of one-fourth of the assets to Ralph, one-fourth to Stanley, and one-half to John was ordered on October 4, 1924. John was awarded a fee of \$1,200 as administrator of Kittie's estate and was discharged as administrator on October 4, 1924.

The community property of John and Kittie at the time of her death included 14,200 shares of stock of Sunshine Mining Company. Some of those shares were in Kittie's name but John had all shares transferred to his name shortly after Kittie died. John did not list any of the Sunshine Mining Company shares as assets or otherwise mention them in the administration of Kittie's estate. Ralph and Stanley were each entitled to 3,550 of those shares upon the death of Kittie as her heirs, and John was entitled to 7,100 of those shares as his portion of the community property of himself and Kittie.

John executed on January 12, 1924, what proved to be his last will, the first paragraph of which was as follows:

Realizing that my son, Ralph E. Hedges, has or will come into possession of practically one-quarter of such estate as I have created, prior to the making of this, my Will, and is therefore suitably provided for, I hereby give and bequeath unto my said son Ralph, the sum of Five (\$5.00) Dollars.

He left the remainder of his estate to Jessie Ames Belton, whom he married on April 5, 1924. John asked Jessie at the time he married her never to

let Ralph know that Kittie and John had owned the Sunshine Mining Company stock and said he did not have to declare that stock in the inventory of Kittie's estate because it had no value. John died on February 1, 1944, survived by Jessie and the two petitioners.

The following table shows the year, rate, and total for 3,550 shares of the dividends declared on Sunshine Mining Company stock:

Year	Per Share	Amount Attributable to 3,550 shares
1927.....	\$0.08	\$ 284.00
1928.....	0.12	426.00
1929.....	0.22	781.00
1930.....	0.16	568.00
1931.....	0.02	71.00
1932.....	0.10	355.00
1933.....	0.25	887.50
1934.....	0.68	2,414.00
1935.....	1.40	4,970.00
1936.....	2.25	7,987.50
1937.....	3.00	10,650.00
1938.....	2.20	7,810.00
1939.....	1.60	5,680.00
1940.....	1.60	5,680.00
1941.....	1.30	4,615.00
1942.....	.55	1,952.50
1943.....	.45	1,597.50
1944.....	.20	710.00
	Total.....	\$57,439.00

The petitioners learned for the first time after the death of John that the community property of Kittie and John at the death of Kittie had included shares of Sunshine Mining Company stock and that

the number of those shares was 14,200. Each petitioner filed a claim against the estate of John setting forth the fact that John had not disclosed the ownership of the 14,200 shares of Sunshine Mining Company stock in the administration of Kittie's estate and had thereby deprived each of the petitioners of the 3,550 shares of that stock to which he was entitled in the distribution of that estate. They also set forth that dividends in the amount of \$57,439 had been paid on each block of 3,550 shares during the time it had stood in the name of John and each petitioner was entitled to have turned over to him 3,550 shares of the stock, \$57,439 representing the dividends thereon, and 6 per cent interest on the dividends from the date of declaration.

John still held the stock at the time he died and his estate contained sufficient funds to make proper restitution to the two petitioners. Jessie, as executrix of John's estate, knew that the petitioners were entitled to the stock and the dividends and, with the approval of the Court, turned over in 1944 to each of the petitioners 3,550 shares of Sunshine Mining Company stock and cash or other property in the amount of \$57,439 which the two petitioners agreed to accept in full settlement of the amounts due them.

Dividends on all of the shares of Sunshine Mining Company stock standing in the name of John were reported on his income tax returns for the years 1934 through 1943, inclusive, except that the record does not show whether or not they were reported on his return for 1936. The record does not

show whether or not John reported the dividends for the years prior to 1934.

Ralph paid legal expense of \$21,000 in 1944 in connection with the recovery of the shares of stock and the \$57,439 from the estate of John.

The Commissioner, in determining the deficiency against Ralph, added \$42,780.67 to the income shown on the return and explained that \$57,479 received in 1944 in settlement of the claim against the estate of John constituted taxable income and "the \$21,000 of legal expenses incurred by you in 1944 was incurred in part for the recovery of capital and in part for the recovery of income and that deduction is allowable only to the percentage that \$57,439.00 bears to \$82,289.00, the total of income and capital recovered."

The Commissioner, in determining the deficiency against Stanley, added \$57,439 to income with the explanation that it represented taxable income received in settlement of a claim filed against the estate of John.

All facts stipulated by the parties, including all joint exhibits, are incorporated herein by this reference.

### OPINION

Murdock, Judge: The Commissioner argues that John properly reported the dividends since he received them under color of title and claim of right; they were not taxable to a trust *ex maleficio* or any other trust recognized as a taxpayer; and the petitioners are taxable in 1944 with the \$57,439 which



they received, not as heirs of Kittie, but as creditors of John's estate under a claim, the gravamen of which was loss of profits, since under no sound theory could the dividends have been reported by or for them in the years of payment by the corporation. The petitioners argue that the dividends were taxable currently to a constructive trust of which John was trustee. They state that the tax which the Commissioner has already received on the dividends from John substantially exceeds that which would have been due if the income had been properly reported during those years either by a fiduciary or by the two petitioners whose income was much less than John's during those years. They point out that to pile up all of this income in the one taxable year 1944 would impose upon them a very high tax and would be an extreme hardship in view of the fact that they were entitled to receive this income over a long series of lower tax years during which their tax burdens, if any, would have been small, and the fault of John should not impose upon them the hardships inherent in the determination of the Commissioner.

John became the administrator of Kittie's estate and held title to the two blocks of stock while acting as fiduciary. The record does not show the value of that stock at the time Kittie died but obviously John thought it had some value because he was careful to conceal it from the lawful owners and to have it placed in his name. He knew it was community property. The probate court ordered distribution of Kittie's estate and discharge of the



administrator on October 4, 1924. That would have properly terminated the administration and settlement of her estate for all purposes had the administrator not intentionally omitted the stock from the list of assets subject to administration. He thereafter necessarily continued to hold the shares in a fiduciary capacity and there was no complete and legal settlement of Kittie's estate until the part thereof which belonged to these two petitioners was turned over to them in 1944 along with amounts equivalent to the dividends on the stock paid during the time when it was wrongfully withheld from their possession by John, the administrator of Kittie's estate.

Both parties agree that the determining factor in the petitioners' acquisition of the equivalent of the dividends is the basic nature of the claim upon which the recovery was made. The real basis for the petitioners' claims against the estate of John was the rights which they acquired as heirs of Kittie. John, during his lifetime, or a new administrator for Kittie's estate after his death, could have been required to distribute to the petitioners not only the stock but also funds equivalent to the dividends. The two petitioners, learning for the first time of their rights, asserted them as heirs of Kittie, they were not contested, and the property which John had been holding was turned over to its owners.

Section 142 requires "every fiduciary" to file a return if the gross or net income which he is to report exceeds stated amounts. Section 161(a)(3) imposes a tax upon "Income received by estates of

deceased persons during the period of administration or settlement of the estate". Section 162(c) allows the estate of a deceased person during the period of administration or settlement of the estate a deduction for the amount of the income of the estate "for its taxable year, which is properly paid or credited during such year to any legatee, heir, or beneficiary, but the amount so allowed as a deduction shall be included in computing the net income of the legatee, heir, or beneficiary".

The only question here is whether the entire amounts which the petitioners received in 1944 are taxable income to them for that year. If they had recovered interest on the dividends it would have been taxable to them in its entirety in 1944, and likewise if John had sold the stock and the petitioners had sued him for their loss of dividends on the stock, their recovery might have been taxable in its entirety in the year received because only then would they have had an unconditional, unqualified right to receive it. Cf. *Swastika Oil & Gas Co. vs. Commissioner*, 123 F. 2d 382, 384, cert. denied 317 U. S. 639. However, those things did not happen. John concealed from Kittie's heirs the fact that he held the stock and was receiving the dividends. The gravamen of the claim of the petitioners was not for loss of profits but was for the stock which belonged to them as heirs of Kittie and for the dividends received on that stock, both of which John, who was administrator of Kittie's estate, possessed at the time he died. Both John and his executrix knew and admitted that the stock and dividends be-

longed to the petitioners. They required John, through his estate, to account to them for what was already theirs.

Those dividends were taxable to some taxpayer when they were received. The petitioners were not the ones, however, since they used a cash method, they had not received the dividends, and they did not even know during those years of their rights to the stock or to the dividends. Regulations 111, section 29.161-1 provides that the period of administration or settlement of an estate is the time actually required to administer and settle the estate whether it is longer or shorter than the period specified in the local statute for settlements of estates. That regulation has been approved in a number of cases in some of which it was held that the "period of administration or settlement of the estate" of a deceased person for the purposes of sections 161(a)(3) and 162(c) may differ from the period of administration of the estate terminated by an order of the probate court. *Walter A. Frederick*, 2 T.C. 936, reversed 145 F. 2d 796; *William C. Chick*, 7 T.C. 1414, affirmed 166 F. 2d 337; *Estate of W. G. Farrier*, 15 T.C. 277; *Josephine Stewart*, 16 T.C. 1; *Alma Williams, et al.*, 16 T.C. 893. The probate court in the present case would not have closed the administration and discharged John as administrator of Kittie's estate if it had known that he was holding Sunshine Mining Company stock belonging to the estate which he had not included in the administration of the estate. John actually received dividends on the stock in each year from 1927 until

1944, and if the Commissioner had had knowledge of the facts he could have taxed those dividends to John in a fiduciary capacity as they were received under his regulation and section 161(a)(3). No distribution of those dividends was made to the heirs in any taxable year except the year 1944. Thus, no deduction under section 162(c) was proper for any year except 1944. The dividends declared and paid in 1944 were actually distributed to the petitioners in that year and are deductible by the fiduciary and taxable to the petitioners for 1944. John, so far as the record shows, never filed any income tax returns as administrator of the estate of Kittie or as a trustee for the estate which would bar the Commissioner from collecting any taxes lawfully due from him as administrator or trustee of that estate. Since the dividends for years prior to 1944 were taxable to the fiduciary without deduction, they were not thereafter taxable to the petitioners when finally distributed to them. *Elnora C. Haag*, 19 B.T.A. 982, 990, affirmed 59 F. 2d 514; *Commissioner vs. Owens*, 78 F. 2d 768, 776.

Ralph has failed to show that the Commissioner's allocation of the attorney fee was improper.

Reviewed by the Court.

Decisions will be entered under Rule 50.

Hill, and Withey, JJ, concur in the result.

Tietjens, J., dissenting: The majority opinion apparently is based on the theory that John, de-



spite the fact that the probate court had discharged him as administrator and closed the administration and despite the fact that he had wrongfully had the stock transferred to his own name, had collected the dividends as his own thereafter and paid income tax thereon in his individual capacity, was, nevertheless, still a fiduciary within the meaning of sections 161 and 162 of the Code and that the period of administration of the estate still continued under Regulations 111, section 29.161-1. I think this theory is erroneous. It is appreciated that periods of administration may extend for purposes of the Regulations beyond the time the administration is closed by the appropriate court, for instance, in the case of administering after discovered assets. But, here, John was in no sense acting with reference to the stock on behalf of the estate or in its interest. He was really a wrongdoer in that respect. I do not think his actions extended the "period of administration". Aside from this theory it seems to me the case is governed by the principles stated in *Virginia Hansen Vincent*, 18 T.C. . . (No. 40) and the dividends disgorged to the petitioners and made available to them for the first time in 1944 should be taxed to them in that year.

Raum, J., agrees with this dissent.

[Title of Tax Court and Cause No. 29469.]

## COMPUTATION BY PARTIES FOR ENTRY OF DECISION

The attached proposed computation is submitted, on behalf of the parties, to the Tax Court of the United States, in compliance with its opinion determining the issues in this proceeding.

This computation is submitted in accordance with the opinion of the Tax Court, without prejudice to the parties' rights to contest the correctness of the decision entered herein by the Tax Court, pursuant to the statutes in such cases made and provided.

/s/ KENNETH C. HAWKINS,  
Attorney for Petitioner

/s/ CHARLES W. DAVIS, WHP,  
Chief Counsel, Bureau of Internal  
Revenue, Attorney for Respondent

## AUDIT STATEMENT

Petitioner: Stanley Hedges Childress, 2602 Summitview, Yakima, Washington. Docket No. 29469.

Tax Liability for the Taxable Year Ended December 31, 1944:

Liability: None.

Liability Disclosed by Return: None.

Deficiency: None.

Overassessment: None.



Recomputation of tax liability prepared in accordance with the opinion of The Tax Court of the United States promulgated June 30, 1952.

Taxable Year Ending December 31, 1944

Schedule 1—Adjustments to Net Income

Net income as disclosed by the deficiency	
letter dated April 17, 1950.....	\$57,477.02
As adjusted .....	538.02
	<hr/>
Reduction .....	\$56,939.00
Reduction:	
1. Elimination of other income.....	\$57,439.00
Addition:	
2. Elimination of standard deduction..	500.00
	<hr/>
Reduction .....	\$56,939.00

Schedule 2—Explanation of Adjustments

1. Since it has now been decided by The Tax Court of the United States that the sum of \$57,439.00, representing cash and other property which was received by the petitioner in 1944 in settlement of a claim filed against the estate of John T. Hedges, does not constitute income taxable to the petitioner, such income is now eliminated.

2. Since by reason of adjustment 1 above the petitioner is not entitled to the standard deduction, such deduction is now disallowed.



Tax Court of the United States

Docket No. 29469

STANLEY HEDGES CHILDRESS,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DECISION

The Parties filed an agreed computation on August 14, 1952, pursuant to the Court's Findings of Fact and Opinion promulgated June 30, 1952.

Therefore, it is

Ordered and Decided, that there is no deficiency in income tax for the year 1944.

[Seal]        /s/ J. E. MURDOCK,

Judge

Entered August 19, 1952.

In the United States Court of Appeals  
for the Ninth Circuit

T. C. Docket No. 29288

COMMISSIONER OF INTERNAL REVENUE,  
Petitioner on Review,

vs.

RALPH E. HEDGES,

Respondent on Review.

### PETITION FOR REVIEW

To the Honorable Judges of the United States  
Court of Appeals for the Ninth Circuit:

The Commissioner of Internal Revenue hereby petitions the United States Court of Appeals for the Ninth Circuit to review the decision entered by The Tax Court of the United States in this proceeding on August 19, 1952 "that for the year 1944 there is a deficiency in income tax of \$109.00 and a penalty under section 294 of \$10.61; \* \* \*." This petition for review is filed pursuant to the provisions of Sections 1141 and 1142 of the Internal Revenue Code.

The respondent on review, Ralph E. Hedges (hereinafter referred to as the taxpayer), is an individual residing at 120 North 48th Street, Seattle, Washington. The taxpayer filed his Federal income tax return for the calendar year 1944, the taxable year here involved, with the Collector of Internal Revenue for the District of Washington.

## Nature of Controversy

The sole question which was presented to and passed upon by The Tax Court of the United States concerns the taxability to the taxpayer of the sum of \$57,439.00 received by him during the taxable year 1944 in disposition of the claim asserted by him against the estate of his deceased father. At the time of the death of Kittie J. Hedges, the taxpayer's mother, on March 23, 1923, the community property of John Hedges, her husband, and Kittie included 14,200 shares of stock of Sunshine Mining Company. Some of the shares were in Kittie's name but her husband, John, had all of the shares transferred to his name shortly after her death. None of the said shares was listed or mentioned by John in the administration of Kittie's estate. The taxpayer and his nephew, Stanley Hedges Childress, were each entitled to 3,550 of these shares upon Kittie's death, as her heirs, and John T. Hedges, the husband of Kittie and the father of the taxpayer, was entitled to 7,100 of the shares as his portion of the community property. John, who remarried after the death of Kittie, died on February 1, 1944, leaving the bulk of his estate to his second wife, Jessie Ames Belton.

Upon learning that the community property of Kittie and John, at the death of Kittie, had included the Sunshine Mining Company shares, the taxpayer and his nephew each filed a claim against John's estate for his share of the said stock, and \$57,439.00 representing dividends paid thereon during the time the stock had stood in John's name.

Jessie, as executrix of John's estate, with the approval of the Court, turned over to the taxpayer in 1944 the 3,550 shares of Sunshine Mining Company stock and cash or other property in the amount of \$57,439.00 which the taxpayer agreed to accept in full settlement of the amounts due him. The taxpayer not having returned as taxable income the \$57,439.00 recovered by him, the Commissioner added such sum to the taxpayer's reported income less \$14,658.33 representing an allocate portion of legal expenses amounting to \$21,000.00 which were incurred by the taxpayer in recovering the stock and dividends.

The Tax Court of the United States disagreed with the Commissioner's determination and held that the taxpayer's father had held the shares and had received dividends thereon as a fiduciary and was liable for tax on the dividends so that when the stock and dividends were later turned over to the taxpayer, he, the taxpayer, was not taxable in the year of receipt on the dividends for prior years.

/s/ CHARLES S. LYON, C.A.R.,

Assistant Attorney General

/s/ CHARLES W. DAVIS, C.A.R.,

Chief Counsel, Bureau of Internal  
Revenue,

Attorneys for Petitioner on Review

Of Counsel:

CHARLES E. LOWERY,

Special Attorney, Bureau of Internal  
Revenue

[Endorsed]: T.C.U.S. Filed Nov. 12, 1952.



In the United States Court of Appeals  
for the Ninth Circuit

T. C. Docket No. 29469

COMMISSIONER OF INTERNAL REVENUE,  
Petitioner on Review,

vs.

STANLEY HEDGES CHILDRESS,  
Respondent on Review.

### PETITION FOR REVIEW

To the Honorable Judges of the United States  
Court of Appeals for the Ninth Circuit:

The Commissioner of Internal Revenue hereby petitions the United States Court of Appeals for the Ninth Circuit to review the decision entered by The Tax Court of the United States in this proceeding on August 19, 1952 "that there is no deficiency in income tax for the year 1944." This petition for review is filed pursuant to the provisions of Sections 1141 and 1142 of the Internal Revenue Code.

The respondent on review, Stanley Hedges Childress (hereinafter referred to as the taxpayer), is an individual residing at 2703 Palatine Avenue, Yakima, Washington. The taxpayer filed his Federal income tax return for the calendar year 1944, the taxable year here involved, with the Collector of Internal Revenue for the District of Washington.

### Nature of Controversy

The sole question which was presented to and passed upon by The Tax Court of the United States concerns the taxability to the taxpayer of the sum of \$57,439.00 received by him during the taxable year 1944 in disposition of the claim asserted by him against the estate of his deceased grandfather, John T. Hedges. At the time of the death of Kittie J. Hedges (the wife of John and the taxpayer's grandmother) on March 23, 1923, the community property of John and Kittie included 14,200 shares of stock of Sunshine Mining Company. Some of the shares were in Kittie's name but her husband, John, had all of the shares transferred to his name shortly after her death. None of the said shares was listed or mentioned by John in the administration of Kittie's estate. The taxpayer and his uncle, Ralph E. Hedges (son of Kittie), were each entitled to 3,550 of these shares upon Kittie's death, as her heirs, and John T. Hedges (the husband of Kittie and the grandfather of the taxpayer) was entitled to 7,100 of the shares as his portion of the community property. John, who remarried after the death of Kittie, died on February 1, 1944, leaving the bulk of his estate to his second wife, Jessie Ames Belton.

Upon learning that the community property of Kittie and John, at the death of Kittie, had included the Sunshine Mining Company shares, the taxpayer and his uncle each filed a claim against John's estate for his share of the said stock, and \$57,439.00 representing dividends paid thereon dur-

ing the time the stock had stood in John's name. Jessie, as executrix of John's estate, with the approval of the Court, turned over to the taxpayer in 1944 the 3,550 shares of Sunshine Mining Company stock and cash or other property in the amount of \$57,439.00 which the taxpayer agreed to accept in full settlement of the amounts due him. The taxpayer not having returned as taxable income the \$57,439.00 recovered by him, the Commissioner added such sum to the taxpayer's reported income which adjustment gave rise to a deficiency in income tax determined by the Commissioner in the amount of \$33,762.08.

The Tax Court of the United States disagreed with the Commissioner's determination and held that the taxpayer's grandfather had held the shares and had received dividends thereon as a fiduciary and was liable for tax on the dividends so that when the stock and dividends were later turned over to the taxpayer, he, the taxpayer, was not taxable in the year of receipt on the dividends for prior years.

/s/ CHARLES S. LYON, C.A.R.,  
Assistant Attorney General

/s/ CHARLES W. DAVIS, C.A.R.,  
Chief Counsel, Bureau of Internal  
Revenue  
Attorneys for Petitioner on Review

Of Counsel:

CHARLES E. LOWERY,  
Special Attorney, Bureau of Internal  
Revenue

[Endorsed]: T.C.U.S. Filed Nov. 12, 1952.

[Title of U. S. Court of Appeals and Cause 29469.]

### STATEMENT OF POINTS

Comes Now the Commissioner of Internal Revenue, petitioner on review in the above-entitled cause, by his attorneys, Charles S. Lyon, Assistant Attorney General, and Charles W. Davis, Chief Counsel, Bureau of Internal Revenue, and hereby states that he intends to rely upon the following points in this proceeding:

The Tax Court of the United States erred:

1. In entering its decision "that there is no deficiency in income tax for the year 1944."

2. In failing and refusing to sustain the deficiency in tax determined by the Commissioner for the taxable year 1944.

3. In holding and deciding that the taxpayer did not receive taxable income in the amount of, to wit, \$57,439 representing an amount equivalent to accumulated dividends on 3,550 shares of corporate stock previously withheld from him by his grandfather as part of the distributable assets of the estate of his deceased grandmother, which amount was paid to the taxpayer in 1944 by the executrix of the estate of the taxpayer's deceased grandfather (the second decedent) in connection with a creditor's claim filed by the taxpayer against his deceased grandfather's estate.

4. In failing and refusing to hold and decide that the taxpayer received taxable income in the amount of, to wit, \$57,439 representing an amount equivalent to accumulated dividends on 3,550 shares of

corporate stock previously withheld from him by his grandfather as part of the distributable assets of the estate of his deceased grandmother, which amount was paid to the taxpayer in 1944 by the executrix of the estate of the taxpayer's deceased grandfather (the second decedent) in connection with a creditor's claim filed by the taxpayer against his deceased grandfather's estate.

5. In that its opinion and decision are not supported by, but are contrary to, its findings of fact.

6. In that its opinion and decision are not supported by, but are contrary to, the evidence.

7. In that its opinion and decision are contrary to law and the Commissioner's regulations.

/s/ CHARLES S. LYON, C.A.R.,  
Assistant Attorney General

/s/ CHARLES W. DAVIS, C.A.R.,  
Chief Counsel, Bureau of Internal  
Revenue,  
Attorneys for Petitioner on Review

Statement of Service attached.

[Endorsed]: T.C.U.S. Filed Jan. 26, 1953.



The Tax Court of the United States  
Washington

[Title of Causes Nos. 29288, 29469.]

## CERTIFICATE

I, Victor S. Mersch, Clerk of The Tax Court of the United States do hereby certify that the foregoing documents, 1 to 47, inclusive, constitute and are all of the original papers and proceedings, save for document number 27, which is a copy furnished by respondent and used by the Court in lieu of the original paper which was lost and has never been found, and with original exhibits (1-A through 3-C attached to the stipulation of facts, Petitioner's exhibits 4 through 8 and Respondent's exhibits D through F), admitted in evidence, on file in my office as the original and complete consolidated record in the proceedings before The Tax Court of the United States entitled: "Ralph E. Hedges, Petitioner, vs. Commissioner of Internal Revenue, Respondent, Docket No. 29288" and "Stanley Hedges Childress, Petitioner, vs. Commissioner of Internal Revenue, Respondent, Docket No. 29469" and in which the respondents in The Tax Court have initiated appeals as above numbered and entitled, together with a true copy of the docket entries in said Tax Court proceedings, as the same appear in the official docket book in my office.

In testimony whereof, I hereunto set my hand and affix the seal of The Tax Court of the United



States, at Washington, in the District of Columbia, this 29th day of January, 1953.

[Seal] /s/ VICTOR S. MERSCH,  
Clerk, The Tax Court of the United  
States.

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[Endorsed]: No. 13700. United States Court of Appeals for the Ninth Circuit. Commissioner of Internal Revenue, Petitioner, vs. Ralph E. Hedges, Respondent; Commissioner of Internal Revenue, Petitioner, vs. Stanley Hedges Childress, Respondent. Transcript of the Record. Petitions to Review Decisions of The Tax Court of the United States.

Filed: February 3, 1953.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.

In the United States Court of Appeals  
for the Ninth Circuit

No. 13,700

COMMISSIONER OF INTERNAL REVENUE,

Petitioner,

vs.

RALPH E. HEDGES and STANLEY HEDGES  
CHILDRESS,

Respondents.

DESIGNATION OF RECORD FOR PRINTING

The Commissioner, Petitioner in the above-entitled action, designates the following portions of the record, proceedings and evidence for printing:

Document No. 2—Docket entries No. 29469.

Document No. 11—Petition No. 29469.

Document No. 13—Answer No. 29469.

Document No. 19—Stipulation of facts but not Joint Exhibits 1-A through 3-C.

Document No. 20—The following testimony: (a) Jessie Bolton Dean; (b) Stanley Hedges Childress; (c) Ralph E. Hedges.

Document Nos. 31 and 34—Findings of Fact and Opinion.

Document Nos. 35 and 36—Decision No. 29469.

Document No. 39—Petition for Review No. 29469.

Document No. 45—Statement of Points No. 29469.

Stipulation as to the pleadings, decision and

statement of points in Commissioner vs. Ralph E. Hedges, Tax Court Docket No. 29288 and as to the use of Exhibits which are not to be printed but considered on review.

This designation of record for printing.

/s/ H. BRIAN HOLLAND,  
Assistant Attorney General

[Endorsed]: Filed Feb. 28, 1953. Paul P. O'Brien,  
Clerk.

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[Title of U. S. Court of Appeals and Cause.]

### STIPULATION

It is hereby stipulated and agreed by and between the attorneys for the parties in the above-entitled action as follows:

(1) That, subject to the approval of the Court, Commissioner vs. Ralph E. Hedges and Stanley Hedges Childress, Tax Court Docket Nos. 29288 and 29469, respectively, shall be consolidated for purposes of designating and printing the record, briefing, argument and decision.

(2) That, subject to the approval of the Court, the pleadings, decision and statement of points in Commissioner vs. Ralph E. Hedges, Tax Court Docket No. 29288 and Exhibits 1-A and 3-C (a part of Document 19 of the transcript of record) and F (a part of Document 21 of the transcript of record), which the Commissioner does not propose to include in the printed record for reasons hereinafter set

forth, are before this Court and may be referred to by the parties and their briefs.

Commissioner vs. Ralph E. Hedges and Stanley Hedges Childress, Tax Court Docket Nos. 29288 and 29469, respectively, involve substantially identical questions of law and fact on appeal and therefore to print the pleadings, decisions and statement of points for both cases would incur unnecessary costs. As for the exhibits, they are a part of the record which the parties desire the court to consider but are not being printed because they are exceedingly lengthy and consist of material most or all of which are pertinent only for the composite picture they reflect.

/s/ H. BRIAN HOLLAND,  
Assistant Attorney General,  
Attorney for the Petitioner

/s/ KENNETH C. HAWKINS,  
/s/ A. R. KEHOE,  
Attorneys for the Respondent

So Ordered:

/s/ WM. DENMAN,  
Chief Judge  
/s/ WM. HEALY,  
/s/ WALTER L. POPE,  
United States Circuit Judges

[Endorsed]: Filed Mar. 2, 1953. Paul P. O'Brien,  
Clerk.

[Title of U. S. Court of Appeals and Cause.]

DESIGNATION OF RECORD FOR PRINTING

Comes now Respondent Stanley Hedges Childress and designates the following portion of the record, proceedings and evidence for printing:

All of the record, proceedings and evidence not designated by the Commissioner, except the exhibits.

This designation of record for printing.

/s/ KENNETH C. HAWKINS,

/s/ THOMAS E. GRADY, JR.,

Attorneys for Respondent Stanley  
Hedges Childress

[Endorsed]: Filed Mar. 9, 1953. Paul P. O'Brien,  
Clerk.



